No. 12518

In the United States Court of Appeals for the Ninth Circuit

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

JOHN S. BROWN, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

BRIEF FOR APPELLANT

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STATEMENT OF JURISDICTION

Plaintiff appeals from a final judgment denying restitution of rent overcharges to tenants and injunctive relief in an action brought pursuant to Section 206 of the Housing and Rent Act of 1947, as amended (50 U. S. C. App. 1881, et seq.) (R. 18). The Complaint was filed February 10, 1949 (R. 5). Defendant moved to dismiss. Decision on the motion was reserved until pretrial conference (R. 14). Defendant's answer was filed April 12, 1949 (R. 8). On May 3, 1949, plaintiff moved for summary judgment which was denied on May 25, 1949 (R. 10). Judgment was entered on February 18, 1950 (R. 18), after a

trial on the merits and the entry of Findings of Fact and Conclusions of Law (R. 11). Notice of Appeal was filed on March 29, 1950 (R. 19). Jurisdiction of the District Court is conferred by Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this Court is conferred by Section 1291 of the Judicial Code (28 U. S. C. 1291).

STATEMENT OF THE CASE

Tighe E. Woods, Housing Expediter, plaintiff below, appeals from a final judgment of the United States District Court for the District of Oregon (R. 18) entered on February 18, 1950, which judgment denied the prayers of plaintiff for (1) an injunction against future violations of the Housing and Rent Act of 1947 and (2) an order of restitution of amounts collected as rent overcharges from two tenants. The Complaint which was filed on February 10, 1949 (R. 2) alleged that defendant was the landlord of two controlled housing accommodations located at 2122 S. E. Belmont Street and 2126 S. E. Belmont Street, Portland, Oregon in the Portland-Vancouver Defense-Rental Area (R. 3); that defendant had violated the provisions of the Housing and Rent Act of 1947, as amended, and the regulations issued pursuant thereto by collecting rents in excess of the maximum legal rentals for each of the above housing accommodations (R. 3); that defendant had collected $35.00 per month from Mrs. John Scoggan, occupant of the housing accommodations at 2126 S. E. Belmont Street from May 1, 1948 to January 1, 1949 (R. 3); that the

maximum legal rent for said housing accommodations was $27.20 per month so that the overcharge for nine months for 2126 S. E. Belmont Street was $70.20 (R. 3); that defendant had collected $45.00 per month from Mrs. Aubrey B. Brown, occupant of the housing accommodations at 2122 S. E. Belmont Street from March 1, 1948 to January 1, 1949 (R. 4); that the maximum legal rent for said housing accommodations was $25.70 per month so that the overcharge for eleven months for 2122 S. E. Belmont Street was $212.30 (R. 4); and that the total overcharge was $282.50.

Plaintiff prayed for restitution of overcharges to the tenants and for an injunction against future violations (R. 5). After trial without a jury on June 6, 1949 (R. 15), the trial court found as a fact that the overcharges had been made by defendant as alleged (R. 12) and that the defendant no longer owned the housing accommodations (R. 13).

As Conclusions of Law the Court held that the prayer for an order of restitution must be denied for the reason that the granting of restitution would constitute imprisonment for debt (R. 13). It held further that the injunction should be denied because the defendant was no longer a landlord (R. 13). Judgment was entered on February 18, 1950 (R. 14). Plaintiff appeals from that part of the judgment which denied restitution to the tenants since it was based solely on the conclusion of law that the granting of such restitution would constitute imprisonment for debt (R. 13).

SPECIFICATIONS OF ERROR

I

The District Court erred in holding that the granting of restitution would constitute imprisonment for debt.

II

The District Court erred in denying an order granting restitution of rental overcharges because in so doing it deprived the Housing Expediter of a remedy to which he was entitled and allowed defendant to retain the money by which he had been unjustly enriched.

III

The District Court erred in denying restitution.

SUMMARY

Appellant contends that the trial court should be reversed because it was in error in concluding as a matter of law that the granting of an order of restitution would constitute imprisonment for debt. There is no danger of imprisonment for failure to obey an order of restitution through inability to perform. Financial inability is a valid defense to an order of restitution of money. The Court should have vindicated the public interest under an emergency statute by granting restitution when it was sought by a public official as an aid to enforcement of the federal law. The issuance of an order of restitution would place on defendant the burden of proving his inability to pay which is proper. But if he established such inability there would be no imprisonment. Accord-

ingly, the Court erred as a matter of law in denying relief on the ground that granting an order of restitution would constitute imprisonment for debt.

ARGUMENT

Appellant, plaintiff below, alleges as error only the refusal by the Trial Court to grant restitution of rental overcharges to the two tenants who occupied the housing accommodations owned by defendant, and as to whom overcharges were proved, on the ground that the granting of restitution would constitute imprisonment for debt (R. 13). The refusal to grant an injunction against future violations is not assigned as error in view of the fact, established at the trial, that appellee no longer owns the housing accommodations. However, restitution may be granted without an injunction (*Woods* v. *Richman,* 174 F. 2d 614 (C. A. 9); *Woods* v. *Gochnour,* 177 F. 2d 964 (C. A. 9)).

Appellant, therefore, presents the following argument.

The District Court erred in concluding as a matter of law that the granting of restitution would constitute imprisonment for debt

The contention that an order of restitution would constitute imprisonment for debt cannot be sustained. It has been recently rejected by the Courts of Appeals for the Sixth and Eighth Circuits. In the Sixth Circuit the question arose in the case of *Woods* v. *Budd,* 179 F. 2d 244, in which the Trial Court denied an order of restitution of rental overcharges where

the defendant had defaulted and the Housing Expediter failed to show her inability to pay. The Court of Appeals reversed the Court below without opinion other than instructions to enter an order of restitution against defendant. It has followed the same procedure in a group of five later cases similarly disposed of by the same trial judge. (See *Woods* v. *Edgell,* No. 11018; *Woods* v. *Ferguson,* No. 11019; *Woods* v. *Palicka,* No. 11020; *Woods* v. *Owsley,* No. 11021; and *Woods* v. *Koogle,* 180 F. 2d 1022 in the United States Court of Appeals for the Sixth Circuit.)

The sole question in those cases was of whether or not defendant would be imprisoned for debt. It was fully discussed in the Housing Expediter's brief and on the argument. The same principle was clearly stated in the second Warner Holding Company case, *Warner Holding Company* v. *Creedon,* 166 F. 2d 119 (C. A. 8). The Supreme Court had determined in the case of *Porter* v. *Warner Holding Company,* 328 U. S. 395, that restitution was a proper equitable remedy. The case was then remanded to the District Court which ordered defendants to make restitution of the rental overcharges to the tenants. The defendants on a further appeal contended that they were unable to comply with the court's order and would, therefore, be imprisoned for debt contrary to the Constitution of the United States. The Court of Appeals for the Eighth Circuit rejected this contention stating (at p. 122):

> Nor does it appear from anything in the record that the defendant's officers are presently or that they will be at any time in the future

threatened with an unconstitutional imprisonment. They are in no danger of punishment by imprisonment for failure to perform the order of restitution where performance is impossible, and where they in good faith make a reasonable effort to comply with the court's order. *Chapman* v. *United States,* 8 Cir., 139 F. 2d 327, 331; *McGarry* v. *Securities and Exchange Commission,* 10 Cir., 147 F. 2d 389, 392, 393; *Hagen* v. *Porter,* 9 Cir., 156 F. 2d 362, 366; *Cooper* v. *Dasher, supra,* 290 U. S. page 110, 54 S. Ct. page 7, 78 L. Ed. 203.

The case of *Chapman* v. *United States,* 139 F. 2d 327, 331 (C. A. 8), cited above contains the following statement to the same effect:

> Concerning appellant's final contention that the judgment of the District Court ordering him to pay the amount found by the court to be owing by him to the market administrator for the producer-settlement fund is void, because exposing the appellant to imprisonment for debt in violation of the statute of the United States (28 U. S. C. A. § 843), and contrary to Article 2, Section 16, of the Constitution of the State of Missouri, Mo. R. S. A., it is sufficient to say that there is nothing in the record to indicate that appellant is unable to pay the judgment against him, or even that he is unwilling to pay it if the judgment of the court below is in accordance with the law. Specific enforcement of the marketing orders is authorized by the Marketing Agreement Act, 7 U. S. C. § 608a (6), and mandatory injunctions requiring handlers to make payments of amounts due from them under marketing orders of the Secretary have received approval

> by the courts of the United States. *United States* v. *Rock Royal Co-Op., Inc., et al.,* and other cases cited *supra.* The appellant has not been imprisoned, nor threatened with imprisonment, and, if his contention is well founded, we may not suppose that the District Court will attempt to enforce its judgment by unlawful or unconstitutional means. It will be time enough for the appellant to raise this point when the unlikely contingency occurs or is threatened.

In the instant case the Trial Court denied restitution for the sole reason that to grant restitution would constitute imprisonment for debt (R. 13). If the restitution order is granted, defendant, if able to pay, will be compelled to do so or suffer the penalty attached to contempt of court. But if unable to pay, he will not be imprisoned for debt since inability to pay is a valid defense to a contempt proceeding (Cf. *Maggio* v. *Zeitz,* 333 U. S. 56). This is the type of case where the defendant has the key to the jail in his own pocket. Thus, if the defendant is not financially able to make restitution he will lose nothing by the entry of an order directing him to make restitution. It is only when he fails to obey the order that plaintiff will be entitled to apply for a rule requiring him to show cause why he should not be held in civil contempt.

> *E. Ingraham Co.* v. *Germanow et al.,* 4 F. 2d 1002 (C. A. 2).
>
> *Coca-Cola Co.* v. *Feulner,* 7 F. Supp. 364 (S. D. Tex.).

The Supreme Court has held that restitution of rental overcharges is an equitable remedy which may

be employed by the courts of the United States in bringing about compliance with emergency legislation affecting the economy of the nation. In *Porter* v. *Warner Holding Co., supra,* p. 402, the Supreme Court said:

> * * * When the Administrator seeks restitution under § 205 (a), he does not request the court to award statutory damages to the purchaser or tenant or to pay to such person part of the penalties which go to the United States Treasury in a suit by the Administrator under § 205 (e). Rather he asks the court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant. Such action is within the recognized power and within the highest tradition of a court of equity. Thus it is plainly unaffected by the provisions of § 205 (e).

The order of the Trial Court in this case not only disregarded the public interest but in the face of the Supreme Court's holding on the propriety of an order of restitution condemned it in effect as an unconstitutional exercise of power.

Accordingly, the Court below was clearly in error in denying restitution upon the ground that to grant it would constitute unlawful imprisonment for debt. The premise being false, the ruling based thereon must likewise fall unless there are other reasons assigned for the conclusion reached. Since there are no other grounds stated, the judgment below must be reversed with instructions to grant the relief prayed for in the Complaint.

CONCLUSION

It is respectfully submitted that the judgment should be reversed and the case remanded to the Court below with instructions to grant the order of restitution as prayed for in the Complaint.

Respectfully submitted.

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